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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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2000

In the Matter of	)	
	)	
Deployment of Wireline Services Offering Advanced Services Capability	)	CC Docket No. 98-147
	)	
Implementation of the Local Competition Provisions of the Telecommunications Act of 1996	)	CC Docket No. 96-98
	)	

REPLY OF THE
COMPETITIVE TELECOMMUNICATIONS ASSOCIATION
TO OPPOSITIONS TO THE PETITIONS FOR RECONSIDERATION
BY AT&T AND MCI WORLDCOM

The Competitive Telecommunications Association ("CompTel")[1] submits this reply to the Oppositions to the Petition for Clarification and/or Reconsideration by AT&T and the Petition for Clarification by MCI WorldCom both filed on February 9, 2000. The parties request clarification and/or reconsideration of the Commission's Report and Order in the above referenced proceeding.[2] Both parties ask the Commission to clarify that the Line Sharing Order requires ILECs to facilitate CLEC-to-CLEC line sharing[3], and AT&T asks the Commission to clarify that ILECs cannot discontinue providing DSL service to

[1] With over 300 members, CompTel is the leading industry association representing competitive communications firms and their suppliers. CompTel's member companies include the nation's leading providers of competitive local exchange services and span the full range of entry strategies and options. It is CompTel's fundamental policy mandate to see that competitive opportunity is maximized for *all* its members, both today and in the future.

[2] *In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability, Third Report and Order*, CC Docket No. 98-147, and *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Fourth Report and Order*, CC Docket No. 96-98, FCC 99-355 (rel. December 9, 1999) ("*Line Sharing Order*" or "*Order*").

[3] AT&T Petition for Expedited Clarification, or, in the Alternative, Reconsideration ("AT&T Petition"), pp. 3-9; MCI WorldCom Petition for Clarification (MCI Worldcom Petition"), pp. 3-7.

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an end-user when the end-user switches to a CLEC's voice service.[4] The Commission should grant both Petitions, because Commission relief is necessary to protect consumer choice in the very markets it sought to advance competition through its decision in the *Line Sharing Order*.

On March 22, 2000, Bell Atlantic, BellSouth, GTE, and SBC Communications filed Oppositions to the Petitions of AT&T and MCI WorldCom. In particular, CompTel wishes to respond to the Oppositions of Bell Atlantic and BellSouth, both of which assert an interpretation of the *Line Sharing Order* which, if not rebutted by the Commission through a grant of the AT&T Petition, would be tantamount to a Commission sanction of anticompetitive tying behavior.

I. THE FCC SHOULD NOT ALLOW ITS ORDER TO BE USED AS SUPPORT FOR ANTICOMPETITIVE ILEC TYING BEHAVIOR

Tying occurs where a consumer purchases one product (the "tied" product), not on its own merits, but to secure the other product (the "tying" product) either at all, or on more favorable terms.[5] Both Bell Atlantic and BellSouth argue, in their oppositions to the Petitions of AT&T and MCI WorldCom, that the *Line Sharing Order* allows them to discontinue service to an end-user who is currently purchasing both local exchange service and DSL service if that customer switches to another voice provider.[6] As MCI WordCom explains in its Petition, currently ILECs have a great deal of market power in the market for DSL services for residential and small business consumers.[7] The existence of market power in any one market can provide profitable incentives either to leverage

[4] AT&T Petition, pp. 9-16.

[5] Phillip Areeda, Antitrust Law, Vol. IX, ¶ 1700a. Little, Brown: Boston (1991).

[6] Bell Atlantic Opposition, pp. 3-6; BellSouth Opposition, pp. 9-10.

[7] MCI WorldCom Petition, pp. 8-9.

that market power into a, heretofore, competitive market, or to limit entry into the "monopoly market."[8]

Using the example of an incumbent with DSL market power, CompTel observes several anticompetitive advantages to the incumbent of engaging in a strategy of tying local exchange service, or Internet service, to the purchase of the incumbent's DSL service:

1) Tying would permit the incumbent to raise barriers to entry by forcing competing DSL and Internet/local exchange service providers to enter two markets simultaneously. The Commission has already held that a requirement that a carrier enter two markets at once is a barrier to entry.[9]

2) Tying is an efficient means of monopoly pricing, because it allows the dominant carrier to earn supra-competitive prices on both the DSL service, and through the sale, at "market" or "regulated" prices, of an inferior complementary service. For example, the dominant firm might offer a lower, but yet still supra-competitive, price to those customers who also purchase its local exchange voice, or Internet service. By pricing the standalone DSL price at a supra-monopoly price, the incumbent can efficiently deter entry by more efficient competitors (which otherwise could profit simply by purchasing the DSL service at the retail rate and take profits on their more efficient competitive service). Similarly, the incumbent's inferior complementary products enjoy greater sales at higher prices than they otherwise would.

3) Tying may also allow the dominant carrier to foreclose entry into the ISP or voice markets by selectively removing the most profitable customers, without whom mass marketing would be unprofitable. For example, if there is a positive correlation between DSL purchasers and those most profitable voice or Internet services purchasers, then, by tying DSL with the complementary service, the dominant firm is able to select out of the market only the most profitable customers, leaving its non-DSL providing competitors to compete for those relatively less profitable customers.

An illustrative "real-world" example is described in the accompanying affidavit of Petra Frank-Witt, a New York consumer of local exchange voice, ADSL, and Internet

[8]For a theoretical discussion of the economic incentives, and anticompetitive benefits, to tying, see Carlton, Dennis and Waldman, Michael, "The Strategic Use of Tying to Preserve and Create Market Power in Evolving Industries." National Bureau of Economic Research: Cambridge MA, December 1998.

[9] *Line Sharing Order* at ¶¶ 38-42.

service from Bell Atlantic.[10] The affidavit addresses both the anticompetitive effects of bundling local exchange service with DSL service and the bundling of Internet service with DSL service. Through this example, it becomes apparent that the issue of tying is not simply a Section 251 "ILEC/CLEC" issue, as Bell Atlantic and BellSouth would have the Commission believe, but, rather, these parties are effectively asking the Commission to sanction an interpretation of the Line Sharing Order that would allow them to limit consumer choice.[11]

The Commission could best "clarify" that it did not intend to sanction anticompetitive tying in the *Line Sharing Order*, by simply recognizing the low frequency portion of the loop as a separate unbundled network element, that would, conversely to the high frequency part of the loop, only be available if the incumbent were providing both voice and DSL service over the customer's loop. The low frequency element would be available using the exact same impairment analysis that the Commission has already undertaken in this proceeding. Under this scenario, when a UNE-P provider wishes to provide service to a customer who is already subscribing to the incumbent's DSL service, that carrier could also realize the efficiencies of line-sharing, even if there were no competitive choices of DSL providers. Thus, consumers could then realize the benefits of competition in those markets where competitive alternatives exist and not be forced to

[10] This affidavit was originally prepared for, but not submitted in, CC Docket No. 99-295, the Bell Atlantic-New York Section 271 Application.

[11] It should be noted that BellSouth correctly states that it has already accomplished this result through its ADSL tariff on file with the Commission. BellSouth Opposition, p. 10. Bell Atlantic's ADSL tariff, on the other hand, does not require a consumer to also purchase its voice service in order to purchase ADSL service. Rather, Bell Atlantic only requires that the customer have access to its copper facilities that are capable of providing the service. Bell Atlantic FCC Tariff No. 1, Section 16.8(D)4.-5.

relinquish their competitive choice simply because there is no competition yet in a complementary product market.

CONCLUSION

The Commission should grant the Petitions for Clarification/Reconsideration of AT&T and MCI WorldCom and clarify that ILECs should facilitate, and not encumber, CLEC-to-CLEC line sharing. Moreover, for the reasons explained previously, the Commission must take action to ensure that the *Line Sharing Order* allows consumers to avail themselves of competition to the fullest degree that competitive choice is possible, and that ILECs cannot artificially limit those choices through tying.

Respectfully submitted,

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April 3, 2000

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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Advanced Services Capability	)	CC Docket No. 98-147
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Implementation of the	)	
Local Competition Provisions	)	CC Docket No. 96-98
of the Telecommunications Act of 1996	)	
	)	

DECLARATION OF PETRA FRANK-WITT

ATTACHMENT TO:

REPLY OF THE
COMPETITIVE TELECOMMUNICATIONS ASSOCIATION
TO OPPOSITIONS TO THE PETITIONS FOR RECONSIDERATION
BY AT&T AND MCI WORLDCOM

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Application of New York Telephone Company (d/b/a Bell-Atlantic-New York), Bell Atlantic Communications, Inc., NYNEX Long Distance Company, and Bell Atlantic Global Networks, Inc. for Authorization to Provide In-Region, Inter-LATA Services in New York	)	CC Docket No. 99-295

DECLARATION OF PETRA FRANK-WITT
ON BEHALF OF THE COMPETITIVE
<u>TELECOMMUNICATIONS ASSOCIATION</u>

I, Petra Frank-Witt, declare under penalty of perjury:

1. I am a residential telephone service customer of Bell Atlantic-New York ("BA-NY"). I currently purchase both local telephone exchange service and digital subscriber line ("DSL") service from BA-NY. My service location is in the New York metropolitan area of New York state. I am submitting this affidavit on behalf of the Competitive Telecommunications Association ("CompTel"). I will describe the experience I had in trying to obtain both local exchange service and DSL service from different providers.

5. In August of this year, I began shopping for DSL service. While I could have chosen other DSL providers, BA-NY was about $10 per month cheaper than other providers, and only BA-NY could actually install the service within a relatively quick (three weeks) time frame. The other providers were promising installation within a range of four to six weeks. Therefore, I chose BA-NY's "Infospeed℠" service.

3. In order to receive the Infospeed℠ service, I had to purchase a special computer modem from BA-NY. The advertised price for the "internal" modem that BA-NY was offering with this service was $99.00. Installation cost $99.00 as well.

4. In the first few months after I began receiving Infospeed℠ service, I had a number of problems with both my equipment and the service. As a result, I was in frequent contact with BA-NY, and I was becoming increasingly frustrated with BA-NY's quality of service.

5. During this time period (between September and October of this year), I also received a telephone sales solicitation from a competitive local exchange carrier ("CLEC") called Z-Tel. Z-Tel offered me a voice package, which included local and long distance, as well as several interesting technological features which were not available from BA-NY. One of these features was the ability to view voice mail over the Internet.

6. After receiving this offer from Z-Tel, during one of my frequent phone conversations with BA-NY's customer service representatives, I asked if I could switch my voice service to BA-NY competitors. The customer service agent did not know the answer, but referred me to the BA-NY sales office.

5. I asked the BA-NY sales office representative whether I could switch my voice service to other providers, but retain my Infospeed℠ service on the same line. The sales agent told me that if I switched my voice service to another provider, "the technicians would rip out the equipment [I have paid for]." In other words, if I wanted DSL service from BA-NY, I would also have to buy their voice service.

6. After receiving this response from BA-NY, I sent e-mails to Z-Tel's customer service department asking whether they could offer voice service over the same line that BA-NY provided me with DSL service. The Z-Tel representative also told me that Z-Tel does not offer DSL service and it was their understanding that BA-NY only offers DSL service as part of a package which includes voice and Internet service. Unless this restriction is a technical necessity, I cannot understand why, as a consumer, I am not given free choice among voice, DSL service, and Internet service providers ("ISPs"). The BA-NY Internet service coupled with the DSL service does not provide me with local access numbers in the State of New York in case I want to use a dial-up connection.

7. Shortly after this incident, I was doing some unrelated research on the World Wide Web ("the Web"), where I saw the name "Carol Ann Bischoff" as someone who was quoted in a story relating to competition in local telecommunications markets. I contacted Ms. Bischoff about my problem, and she responded with follow-up calls from her staff.

8. CompTel's staff explained to me that the Bell Atlantic DSL tariff on file with the Federal Communications Commission ("FCC") does not say that I have to purchase local telephone service from BA-NY in order to receive DSL service.

9. I have also sent e-mails, describing my service problems and that I had contacted CompTel, to senior managers within BA-NY. Since these contacts with BA-NY managers, BA-NY has been most responsive to my concerns. They made every effort to resolve my problems and improve my service, and I am grateful for their concerned attention. Although I have not found a competitor who offers all the

services I need (*e.g.*, "distinctive ring"), I am troubled that I cannot, as a practical matter, purchase voice service from the provider of my choice and retain BA-NY's DSL service on the same line. Furthermore, I would like to be able to purchase DSL service coupled with an ISP of my choice; one that offers local access numbers in New York, which BA-NY does not.

10. Given that the FCC is considering BA-NY's efforts to facilitate local exchange competition as part of its evaluation of BA-NY's application to provide long distance service, I believe that my experience is relevant to the FCC's determination.

Pursuant to 47 C.F.R. §1.16, I declare under penalty of perjury that the foregoing is true and correct. Executed on: December 9, 1999.

Petra Frank-Witt

CERTIFICATE OF SERVICE

I, Jonathan D. Lee, hereby certify that I have this 3rd day of April, 2000, sent a copy of the foregoing "Reply of the Competitive Telecommunications Association to Oppositions to the Petitions of AT&T and MCI WorldCom", by hand delivery and first class mail, to the following:

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